

1 In the Matter of the Arbitration

2 Between

3  
4 Riverside Unified School District

Arbitrator's

5 And

Opinion And Award

6 Riverside City Teachers Association

CSMCS No. ARB-O3-2214

7 Issue: Contract Interpretation – Pay for  
8 Additional Work

Joseph J. Woodford , Arbitrator  
September 7, 2004

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11 Procedural Background

12 On or about December 17, 2003, Dennis Hodges, President Riverside City Teachers Association  
13 (Association) filed a Level II grievance in writing with the Riverside Unified School District  
14 (District) on behalf of Sherry Oldfield (Grievant). Glenn King, Assistant Superintendent Human  
15 Resources, denied the grievance in writing on January 21, 2004 (JX 2). Using the services of the  
16 California State Mediation and Conciliation Service, Joseph J. Woodford, was appointed as  
17 Arbitrator. On July 15, 2004, at the District offices, in Riverside, California the arbitration  
18 hearing was held. The hearing was conducted in accordance with Article XIX of the 2002-2005  
19 Collective Bargaining Agreement between the District and Association (JX 1 or CBA).

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21 Marianne Reinhold, Attorney at Law, represented the Association. The District was represented  
22 by J. Michael Summerour, Attorney at Law. Other parties present at the hearing included:

23 For the Association

24 Karen Kyhn, California Teachers Association staff

25 Karen Bost, California Teachers Association staff

1 Dennis Hodges, Association Past President

2 Sherry Oldfield, School Psychologist and Grievant

3 For the District

4 Glenn King, Assistant Superintendent Human Resources

5 Jan Michelson, Payroll Manager

6  
7 No jurisdictional issues were raised. Both the District and the Association were afforded a full  
8 and complete opportunity to be heard, present evidence and examine and cross-examine  
9 witnesses. All witnesses testified under oath. The District audiotaped the hearing, with the  
10 stipulation the Association and Arbitrator would receive a copy. The tape was subsequently  
11 found inaudible. The parties elected to file post-hearing briefs. On August 27, 2004, the  
12 Arbitrator received the last brief.

### 14 Issue For Arbitration

15 At the outset of the hearing the Association and District stipulated to the submission of the  
16 following issues:

- 17 1. Did the District violate the 2002-2005 Agreement for Certificated Bargaining Unit when  
18 it paid grievant for additional hours of service pursuant to an hourly rate based on the  
19 amount of \$80,075, divided by 193 days, divided by 8 hours?  
20 2. If so, what is the appropriate remedy?

Pertinent Contract Provisions

The 2002-2005 Agreement For Certificated Bargaining Unit between Riverside Unified School District And Riverside City Teachers Association CTA/NEA was received into evidence as Joint Exhibit 1. The pertinent provisions Joint Exhibit 1, include:

Article IV – Association Rights, Section 4 – Release Time (E)

*“ The Association shall reimburse the District at the basic daily substitute rate of pay for the release of the Association President for the regular workyear of one hundred eighty-five (185) days. The Association shall fully reimburse the District for all salary, retirement, and payroll related costs for the release of the Association President for all contracted workdays beyond the regular work year. The method of payment for these costs shall be semiannually.”*

Article X – Hours of Employment, Section 4 – Extended Workyear and/or Workday Employees

*“An employee required by the District to work more days than the regular workyear or more hours than the regular workday, except as provided in Section 1D above, shall receive additional compensation by being assigned to a different salary schedule (I.M.S. specialists, counselors, and psychologists, for example), or additional salary schedule (coaches, high school band directors, high school choir directors, high school pep squad and drill team sponsors, for example), or paid at their regular daily rate for each excess day (I.M.S. specialist, bilingual and special education teachers, librarians, and counselors, for example). For purposes of this section, regular full-time K-12 Independent Study teachers shall be compensated on the regular teacher salary schedule for their regular workday as defined in Section 2.”*

Appendix A1, which is the Teacher Salary Schedule, showing anniversary increments on columns C, D, E and F at 20, 24 and 28 years of service in the Riverside Unified School District.

Appendix A1-B, which is the Teacher Salary Schedule showing per diem rates of pay based on 185 workdays. It does not show anniversary increments.

Appendix A1-C, which is the Teacher Salary Schedule for Year Round Teachers with per diem rates of pay based on 182 workdays. It does not show anniversary increments.

#### Appendix A2-B Salary Computation

*“The District adopts the school calendar which determines the number of days an employee is required to be in attendance. Computation of the daily rate, in accordance with E.C.45041, will be the basis for payroll deductions or for a work period less than the normal full year.”*

#### Appendix A3, Anniversary Increment

##### **Definition**

*The Anniversary Increment is recognition of employees who, in positions requiring certification, have given satisfactory service to the District and community for many years.*

*Service is interpreted as regular contract employment in a position requiring certification of not less than 60 percent of full-time, summer service is not applicable. District-granted medical or military leave shall be counted in the years of service.*

##### **Requirement**

*Service as employee in the District in accordance with definition above.*

##### **Stipend**

*1. At the beginning of the school year following the completion of nineteen (19) years of service in the District, an employee's contract shall include a 2.5% stipend.*

*2. At the beginning of the school year following the completion of twenty-three (23) years of service in the District, an employee's contract shall include a 5% stipend.*

1 3. At the beginning of the school year following the completion of twenty-seven (27) years of  
2 service in the District, an employee's contract shall include a 7.5% stipend.

3 An employee who works 75% of any school year shall be given service credit for one (1) full  
4 year.

5 For column AB the above anniversary stipends shall be granted to unit members who acquired  
6 15 or more years of service with the District as of July 1, 2000. Payroll shall calculate the  
7 anniversary increment for Column AB. “

8 Appendix A4, which is the Psychologist Salary Schedule based on 193-day work year. It states  
9 in pertinent part, “Additional workdays will be paid at the assigned daily rate.”

10 Appendix A4-B, which is the Psychologist Salary Schedule based on 208-day work year. It states  
11 in pertinent part, “Additional workdays will be paid at the assigned daily rate.”

## 12 Excerpt From California Education Code

### 13 Section 45041

14 “A person in a position requiring certification  
15 qualifications who serves less than a full school year shall receive  
16 as salary only an amount that bears the same ratio to the established  
17 annual salary for the position as the number of working days he  
18 serves bears to the total number of working days plus institutes in  
19 the annual school term, and any other day when the employee is  
20 required by the governing board to be present at the schools of the  
21 district. Notwithstanding any provisions of this section to the  
22 contrary, a person in a position requiring certification  
23 qualifications who serves a complete semester shall receive not less  
24 than one-half of the established annual salary for the position.  
25 This section shall not be so construed as to prevent the payment of  
compensation to a person while on leave of absence when the payment  
of the compensation is authorized by law.

1 *In the event any such person dies during the school year, his*  
2 *estate shall be entitled to receive, as salary owed to the decedent,*  
3 *an amount that bears the same ratio to the established annual salary*  
4 *for the position as the number of working days he served bears to the*  
5 *total number of working days plus institutes in the annual school*  
6 *term, and any other day when the employee was required by the*  
7 *governing board to be present at the schools of the district, less*  
8 *any salary paid to the decedent prior to his death.”*  
9

### 10 Factual Background

11 Sherry Oldfield, Grievant, is employed by the District as a School Psychologist. She was  
12 assigned to work 193 days during the 2003-2004 school year. School Psychologists, including  
13 the Grievant, with a 193-work year assignment were paid based on the salary schedule found at  
14 appendix A4 of the CBA. Her placement on the salary schedule was at step 9, which was  
15 \$80,075. The Grievant commenced her employment with the District in 1965. Thus she had over  
16 28 years of service with the district, which qualified her for an additional 7.5% or \$6,006  
17 Anniversary Increment as set forth in Appendix A3 of the CBA. During the 2003-2004 school  
18 year the Grievant’s annual salary, including longevity increment was \$86,081 (JX 2).  
19

20 At the District’s request the Grievant worked an additional 10 days during the 2003-2004 school  
21 year. The District paid the Grievant for each hour of additional work at an hourly rate calculated  
22 by dividing \$80,075 by 193 days, divided by 8 hours.  
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25

## Position Of The Parties

### Association

The Association contends that the CBA requires the calculation for additional hours (days) work include the \$6,006 anniversary increment. Thus the hourly rate calculation should have been \$86,081 divided by 193 days, divided by 8 hours. The Association further contends that based upon the clear language of Article X, section 4, and the plain meaning of the language of the CBA, the Grievant's hourly rate can only be calculated by including the anniversary increment. The Association argues that an internally consistent interpretation of CBA Article X, Section 4 with other provisions of the CBA, including appendices A1, A4, A4-B and Article IV, Section 4, requires the inclusion of the anniversary increment in the hourly rate computation. Additionally, the Association contends that Education Code Section 45041 and A2-B requires inclusion of anniversary increments in the calculation of salary deductions for incomplete work years. This is the same calculation prescribed by Article IV, Section 4(E). Thus logic, common sense and consistency require that the same method be used when calculating regular daily rate for extra days worked.

### District

The District maintains the Grievant was properly paid for her additional 10 days of work. The District contends that Article X, Section 4 must be interpreted in light of CBA appendix A1-B and A1-C, which by silence excludes anniversary increments from daily rate computations for teachers. The District further contends that during collective bargaining, that the daily rates set forth in CBA appendix A1-B and A1-C were specifically reviewed, discussed and negotiated between the Association and the District. Additionally, the District contends that for at least the last 14 years the District has never paid any certificated employee for extra work based on a regular daily rate formula, which included longevity stipends or any other stipends. The District

1 asserts the Association is trying to add contract language that was not agreed to in negotiation  
2 making stipends a component of daily/hourly rate calculations.

### 4 Discussion and Opinion

5 The question dividing the Parties in this proceeding is whether the anniversary increment is  
6 included in the calculation of “regular daily (hourly) rate” paid to grievant for 10 days she  
7 worked beyond her regular 193-day work year. The Association claims the CBA requires the  
8 inclusion of the anniversary increment in the calculation of regular daily rate used to pay the  
9 Grievant for extra days of work. The District, however, maintains the anniversary increment was  
10 never meant to be part of the calculation.

11  
12 In any dispute over the interpretation and application of the provisions of a collective bargaining  
13 agreement, the task of an arbitrator is to ascertain and apply the mutual intent of the parties. It is  
14 well settled that the most reliable indicator of mutual intent is the words used by the parties in  
15 their labor agreement. When the terms of the disputed language are clear, the arbitrator must give  
16 full effect to the meaning of those terms. If the language is found ambiguous or susceptible to  
17 conflicting interpretations, the arbitrator will look to other common indicators, such as internal  
18 consistency of contract language, bargaining history and past practice to ascertain the mutual  
19 intent of the parties.

20  
21 Article X, Section 4 requires the District to pay an employee required to work more days than  
22 their regular work year or more hours than their regular workday by assignment to a different  
23 salary schedule “or paid their regular daily rate for each excess day.” If the Grievant’s regular  
24 work year had been 208 days she would have been placed on a different salary schedule, which  
25 is appendix A4-B. It was undisputed that the District pays eligible psychologists their



1 anniversary increment for all assigned 208 days worked when they are place on salary schedule  
2 A4-B. Salary schedule A4-B does not show anniversary increments. The Grievant's regular work  
3 year was 193 days. Thus she was placed on the 193 days work year salary schedule found at  
4 appendix A4, which does not show anniversary increments. For her 10 extra days work the  
5 District calculated the regular daily rate required by Article X, Section 4.

6  
7 The CBA contains different salary schedules for other classes of employees required to work  
8 more days than their regular work year or more hours than their regular workday, which are  
9 found at appendices A1-B and A1-C. Both salary schedules create a daily rate by dividing the  
10 annual salary found in appendix A1 by the number of days in the work year<sup>1</sup>. The daily rates  
11 found in A1-B and A1-C does not include the anniversary increments. Whereas, annual  
12 anniversary increments are found at the bottom of A1 separated from the other annual salary  
13 steps. There is no mention of anniversary increment on A1-B and A1-C.

14  
15 Appendix A3 defines, establishes requirements and sets amounts for anniversary increments. The  
16 amount paid is designated as a "stipend." In the case of the grievant the stipend is 7.5%. The  
17 CBA contains other stipends such as \$750 for earned doctorate. The CBA does not specifically  
18 state whether stipends are included or excluded in the calculation of "regular daily rate" used for  
19 payment of extended work year or workday.

20  
21 Because the language in Article X, Section 4, when read in conjunction with other relevant  
22 provisions of the CBA, reasonably supports either the Association's or District's interpretations,

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24  
25 <sup>1</sup> A1-B shows daily rate based on 185-day work year and A1-C shows daily rate  
based on 182-day work year.

1 the language is found to be ambiguous as applied to the facts in this case. Thus, the analysis turns  
2 to internal consistency of contract language, bargaining history and past practice.

3  
4 The Grievant was placed on Psychologist Salary Schedule A4, which is used for 193-day regular  
5 work year employees. A4 does not show anniversary increments. Yet eligible employees receive  
6 their anniversary increment for 193 days. If the Grievant's regular work year had been 208 days  
7 she would have been place on Psychologist Salary Schedule A4-B, which is also silent on  
8 anniversary increments, and paid her anniversary increment for 208 days. The Association  
9 argues that "an internally consistent interpretation of Article X, Section 4 requires that any  
10 employee receive the same rate of pay for working additional days, regardless of whether the  
11 amount was calculated based on the Psychologist Salary Schedule for 208 days (A4-B) or the  
12 language found in Article X, Section 4.

13  
14 The Association's inconsistent contract language argument is not supported when the CBA is  
15 construed as a whole. Article X, Section 4, which governs "Extended Workyear and/or Workday  
16 Employees, commences with, "An employee required by the District to work more days than the  
17 regular workyear..." The Grievant's regular work year was 193 days. Her extended work year  
18 was an additional 10 days, for which she was paid her regular daily rate that did not include her  
19 anniversary increment. A careful reading of the CBA and the record shows, that if the Grievant  
20 had been on Psychologist Salary Schedule A4-B and her regular work year of 208 days had been  
21 extended by 10 days, the application would have been consistent. The Grievant would have been  
22 paid a regular daily rate for each of the 10 days beyond 208 days. That regular daily rate would  
23 exclude her anniversary increment. This is consistent with 185-day regular work year and 182-  
24 day regular work year employees required to work extended work year (JX 1 A1-B and A1-C).

1 This interpretation gives meaning and effect to Article X, Section 4 and appendices A1-B, A1-C,  
2 A4 and A4-B.

3  
4 The evidence and testimony shows that when employees do not complete a work year their pay  
5 is reduced by a daily rate computation that includes their anniversary increment (JX 1 at A2-B),  
6 which is consistent with Education Code Section 45041 (AX 2). In addition, Article IV, Section  
7 4 (E) uses the a daily rate computation that includes anniversary increments to reimburse the  
8 District “at the basic daily rate of pay for the release of the Association President for the regular  
9 work year of one hundred eighty-five (185) days.” The Association argues that internal  
10 consistency requires the same daily rate formula for salary deductions for incomplete work years  
11 as for extended work year and reimbursement for Association President leave.

12  
13 The Association’s arguments are unpersuasive. Education Code Section 45041 and A2-B of the  
14 Collective Bargaining Agreement provide the method used to calculate payroll deductions for  
15 employees who work less than the “normal” work year. That calculation includes the anniversary  
16 increment. During direct examination Jan Michelson was asked, why the anniversary increment  
17 was included in the salary deduction calculation when a certificated employee works less than  
18 the full year? She responded that if a certificated employee does not work a full work year the  
19 anniversary increment is not earned for that year. This is logical and consistent. When employees  
20 do not complete their regular work year as a result of death, resignation or other reason they are  
21 not paid for days they did not work, including longevity increment, if any. This salary deduction  
22 calculation is applied to the employees “regular” or “normal” work year. The issue in this  
23 arbitration involved “extended work year.”

1 Evidence on bargaining history is found in the testimony of Glenn King, Assistant  
2 Superintendent Human Resources. The District has employed him for 35 years. His involvement  
3 in negotiation of the CBA, as a member of the District's bargaining team, commenced with the  
4 1991-92 school year. He became the District's chief negotiator in 1993-94. He testified that the  
5 language in appendix A3 is the same as found in the 1991-92 CBA (District Ex 5), except the  
6 amount of the stipend has changed over time. He also testified that appendices A1 and A1-C  
7 have remained unchanged, except for amounts. Appendices A1 and A1-C effective July 1, 1994  
8 were received into evidence as District Exhibit 7 in support of his testimony. Glenn King further  
9 testified that salaries were negotiated each year between the District and the Association. The  
10 issue of excluding anniversary increments from calculation of regular daily rate was never  
11 discussed during negotiations. During these salary negotiations appendix A1 always showed the  
12 anniversary increments and the daily rate salary schedules (A1-B and A1-C) did not. He further  
13 testified that during negotiations the District prepared the salary schedules and then forwarded  
14 them to the Association for their review prior to signing off. All during this time, 1991 to  
15 present, Glenn King testified the District always paid employees working beyond their regular  
16 work year a regular daily rate that excluded anniversary increments.

17  
18 The evidence on past practice shows the District has consistently, for 14 or more years, excluded  
19 anniversary increment from calculation of regular daily rate. This is supported by the testimony  
20 of Assistant Superintendent Human Resources, Glenn King, and Payroll Manager, Jan  
21 Michelson. The practice was first questioned in December 2003 when the Association filed the  
22 grievance giving rise to this arbitration.

23  
24 Karen Kyhn, California Teachers Association staff, testified that she had been assigned to work  
25 with the Association. She was involved in the negotiation of the current CBA. It was while

1 processing the grievance, at issue in this arbitration, that Karen Kyhn first became aware that the  
2 District was not including anniversary increments in the base salary for extra days worked. The  
3 Association argues that it was unaware of the practice. Therefore it lacks mutuality. They cite  
4 Grand Rapid Die Casting, Co. (1965 Howlett) 44LA 954, 956. Arbitrator Howlett concluded that  
5 a practice for which the employer failed to offer evidence of union awareness meant that the  
6 employer had not met its burden of establishing a mutual practice which could be used to either  
7 interpret ambiguous language ...” (Association Brief). In that case the employer tried to establish  
8 a past practice based on two occurrences in one year. Arbitrator Howlett distinguished the facts  
9 in Grand Rapids Die Casting, Co. from Mosler Safe Company, 31 LA 189 (Milton H. Schmidt,  
10 1958). In Mosler the practice had been in place for at least the past 18 years. Quoting Arbitrator  
11 Howlett, “Eighteen years is a far cry from two instances during one year. An eighteen-year-old  
12 practice is long enough and repetitive enough so that it is inconceivable to believe that the union  
13 representatives did not know the method of payment being employed.”<sup>2</sup>

14  
15 Jan Michelson testified that the District has employed her for over 14 years as Payroll Manager.  
16 During this time the District had always excluded stipends, including anniversary increments,  
17 from the calculation of regular daily rate. She further testified that more than 300 employees  
18 receive an anniversary increment. She researched and prepared District Exhibit 3 based on  
19 available payroll records for past 3 years<sup>3</sup>. District Exhibit 3 shows 10 employees, including the  
20 Grievant, receiving anniversary increments in which they were paid for extra days worked based  
21 on a regular daily rate calculation that excluded anniversary increments. Foundational payroll  
22 records in support of District Exhibit 3 were received into evidence as District Exhibit 4.

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23  
24 <sup>2</sup> For further discussion on lack of knowledge and degree of mutuality in  
establishing the weight to be accorded past practice, see Elkouri and  
25 Elkouri, *How Arbitration Works*, Third Ed. pp. 406-407.

<sup>3</sup> Jan Michelson testified that payroll records beyond 3 years are in storage.

1  
2 The District's practice of excluding anniversary increments from calculation of regular daily rate  
3 is not isolated, infrequent or occasional. It has occurred numerous times over the past 14 or more  
4 years. During this time salaries have been annually negotiated. Stipend amounts have changed.  
5 Yet the underlying language supporting the District's practice has remained unchanged. There  
6 have been no complaints from employees or the Association for 14 or more years until this  
7 grievance. Thus it must be assumed the Association was aware or should have been aware of the  
8 practice and has acquiesced to this practice.  
9

### 10 Award

11 Having heard or read and carefully reviewed the evidence and briefs in this case and in light of  
12 the above discussion, the Arbitrator finds as follows:

- 13 1. The District did not violate the 2002-2005 Agreement for Certificated Bargaining Unit  
14 when it paid grievant for additional hours of service pursuant to an hourly rate based on  
15 the amount of \$80,075, divided by 193 days, divided by 8 hours?  
16 2. The grievance is denied.  
17

18 Dated: September 7, 2004 at Crestline, California  
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20 Joseph J. Woodford, Arbitrator  
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